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Church and State in Mexico

Professional opinion

of

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NATIONAL CATHOLIC WELFARE CONFERENCE
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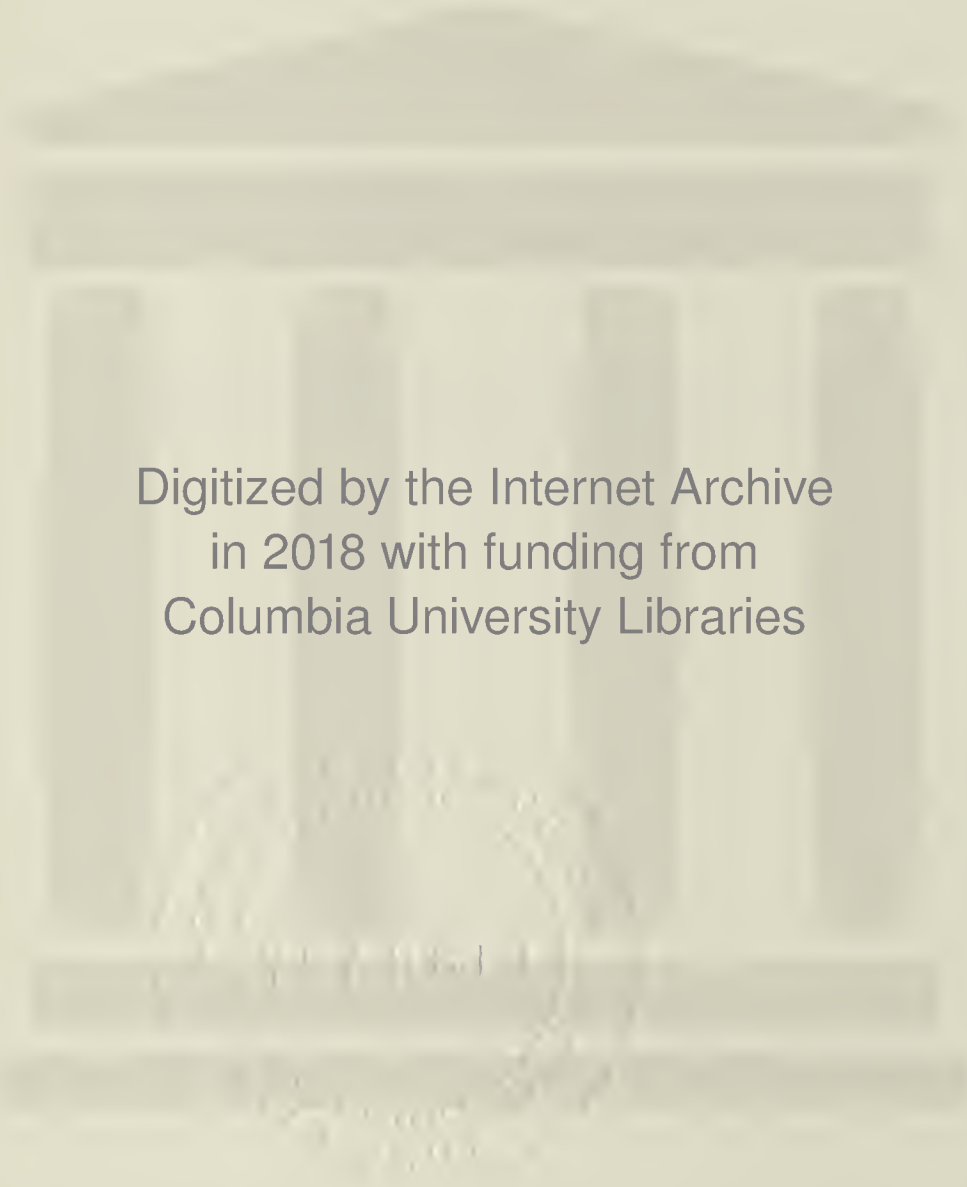

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OPINION OF AMERICAN COUNSEL

AS TO THE PROVISIONS OF THE MEXICAN CONSTITUTION OF 1917 AND OF THE DECREE OF PRESIDENT CALLES OF JUNE 14, 1926.

The opinion of American counsel has been requested in regard to the provisions of the Mexican Constitution of 1917 and of the Decree of President Calles of June 14, 1926, which relate to religion and education in Mexico in so far as these provisions affect the rights of the Roman Catholic Church and of the ministers and members of that faith in Mexico. For the purpose of this opinion, it will be assumed, although apparently doubtful, that the Mexican Constitution of 1917 was legally adopted and that the Presidential Decree of 1926 was legally issued. The Constitution was, however, never submitted to the people of Mexico, but was imposed upon them by a revolutionary and militant minority without due action on the part of the Mexican Congress. It is further assumed, after investigation and conference with Mexican counsel, that, in the respects discussed below, the Roman Catholic Church and her bishops, priests and laymen, as well as all other churches in Mexico, are now substantially remediless in the local courts so far as Mexican law and procedure are applicable to the matters dealt with in this opinion, and that resort thereto would be entirely vain and futile.

The provisions of the Mexican Constitution and Presidential Decree specifically discussed below are in the opinion of the undersigned American counsel in violation of long-established rules of international law and of the fundamental principles of liberty and justice which are recognized in all civilized countries, as well as in violation of fundamental and essential principles of constitutional law, as that term is understood among Americans, in that they conflict with American elementary conceptions of liberty, private property, free exercise of religion, and freedom of speech and of the press. The provisions hereinafter mentioned would in the opinion of the undersigned be held by American courts to be unconstitutional and void whether enacted by Congress or by any State Legislature. It is regretted that the limits of a legal opinion prevent a more comprehensive and exhaustive discussion of far-reaching principles of human freedom and of the rights of men which are not challenged in any country or under any régime worthy of the name of liberty, equality, or fraternity in the true and vivifying sense of each of these political principles, but which are now being violated in Mexico.

The principal questions arising under the Mexican Constitution of 1917 and the Presidential Decree of 1926, which latter professes to carry out and enforce the Constitution and render it practically effective, will be considered as concisely as practicable under five subdivisions or heads, viz., (1) international law, (2) separation of Church and State, (3) confiscation of church property, (4) education, and (5) international relations.

The translation of the Mexican Constitutions of 1857 and 1917, which was printed this year by the

United States Government Printing Office at Washington, will be used in connection with this opinion, although in respect of important terms and their possible construction by officials or courts in Mexico, an effort has been made to verify such translation by reference to dictionaries, publications and conference with Mexican counsel, to the end that so far as practicable the risk of misinterpretation or misrepresentation in so important a matter should be avoided. The extracts from the Mexican Constitution and Presidential Decree are not summarized and hence are unavoidably lengthy, because any epitome might seem either incredible or distorted, and the actual provisions must, consequently, be left to speak for themselves.

1.

VIOLATION OF RIGHTS OF ROMAN CATHOLIC CHURCH UNDER INTERNATIONAL LAW.

The Mexican Constitution of 1917 provides in Article 130 that—

> "The law recognizes no juridical [*i. e.* juristic] personality in the religious institutions known as churches."

The deliberate intent and the direct effect of this constitutional enactment is that all churches in Mexico are denied the right either to petition the Mexican Congress or to appeal to the courts for redress of wrongs, however grave and unlawful, or for protection against oppression or violation of the commonest rights by government officials or otherwise. The churches are deprived of all means of redress and protection, and denied any legal or

juristic personality whatever; and the Roman Catholic Church cannot appeal to Congress or to the courts to enforce its property rights, which is in direct violation of long-established principles of international law, or as it is termed in Europe, Africa and Asia, the law of nations, or the *jus gentium* of the Roman law.

Thus, last September, when the Roman Catholic Hierarchy, to which faith belong fully ninety-five per centum of the Mexican population so far as it professes any Christian faith, respectfully presented to the Mexican Congress a petition seeking the redress of grievances and protection against violations of church rights which are recognized to-day by every civilized country in the world and protesting against the confiscation of church property, the petition was laid on the table and wholly disregarded, if not spurned, either because the Catholic Church under the Mexican Constitution of 1917 had no juridical (juristic) personality or capacity to present any petition whatever, or because the Catholic Bishops so petitioning had lost their citizenship and right to petition by having violated Article 37, which provides as follows:

"Art. 37. Citizenship shall be lost: . . .

"III. By compromising themselves in any way before ministers of any religious creed or before any other person not to observe the present Constitution, or the laws arising thereunder." *

This denial to the Roman Catholic Church of juristic entity or personality violates international law among all civilized nations under principles of universal accept-

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* See *The New York Times*, October 3, 1926, and appendix hereto containing statement of Mexican Episcopate.

ance "both in the law of continental Europe and in the common law of England," as has been emphatically declared by the Supreme Court of the United States.

In the case of *Ponce* v. *Roman Catholic Church* (1908), 210 United States Reports, pp. 296 *et seq.*, that court was called upon to consider and adjudicate upon the issue whether the Roman Catholic Church could sue in Porto Rico to protect its property rights against attempted spoliation. The case is especially instructive because the court reviewed the history of Spain in respects equally applicable to Mexico, which was itself for centuries a Spanish colony or dominion. The opinion was delivered by the late Chief Justice Fuller, and among the statements applicable to the present discussion (at pp. 314-15, 318-19) were the following:

> "The Spanish law as to the juristic capacity of the church at the time of the cession [*i. e.*, of Porto Rico from Spain to the United States in 1919 under the Treaty of Paris] merely followed the principles of the Roman law, which have had such universal acceptance, both in the law of continental Europe and in the common law of England. . . . The right of the church to own, maintain and hold such properties was unquestioned, and the church continued in undisputed possession thereof. . . .
>
> "This was the status at the moment of the annexation, and by reason of the treaty, as well as under the rules of international law prevailing among civilized nations, this property is inviolable.
>
> "The corporate existence of the Roman Catholic Church, as well as the position occupied by the Papacy, has always been recognized by the Government of the United States. . . .

"The proposition, therefore, that the church had no corporate or jural personality seems to be completely answered by an examination of the law and history of the Roman Empire, of Spain and of Porto Rico down to the time of the cession, and by the recognition accorded to it as an ecclesiastical body by the Treaty of Paris and by the law of nations. . . . . by the Spanish law, from the earliest moment of the settlement of the island to the present time, the corporate existence of the Catholic Church has been recognized."

In concluding the unanimous opinion of the Supreme Court, its learned and revered Chief Justice used the following language (pp. 323-4):

"We accept the conclusions of appellee's counsel [Messrs. Coudert, Kingsbury and Fuller] as thus summarized: . . .

" 'Second. The Roman Catholic Church has been recognized as possessing legal personality by the Treaty of Paris and its property rights solemnly safeguarded. In so doing the treaty has merely followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession. This juristic personality and the church's ownership of property had been recognized in the most formal way by the concordats between Spain and the Papacy and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era.

" 'Third. The fact that the municipality may have furnished some of the funds for building or repairing the churches cannot affect the title of the Roman Catholic Church, to whom such funds were thus irrevocably donated and by whom these temples were erected and dedicated to religious uses.' "

This decision of the Supreme Court of the United States establishes that the provision of the Mexican Constitution of 1917, Article 130, denying juristic personality to the churches is clearly in violation of a recognized rule of international law. To the same effect are the decisions in the cases of *Santos* v. *Roman Catholic Church,* 212 United States Reports, at pp. 463 *et seq.,* and *Barlin* v. *Ramirez,* 7 Philippine Reports, at pp. 41 *et seq.*

There can be no doubt whatever, in the opinion of the undersigned American counsel, that if such a provision as is contained in Article 130 of the Mexican Constitution of 1917, depriving the Roman Catholic Church of juristic personality and thereby of the right to sue or to petition, were contained in any statute of our Federal Congress or in any state constitution or statute, it would be declared by our courts of justice to be unconstitutional and void because depriving the Roman Catholic Church of liberty and property without due process of law and denying to it the equal protection of the law, which latter principle is itself contained in and of the very essence of "due process of law" in American jurisprudence. If, moreover, there were now any international judicial tribunal, such as the Permanent Court of International Justice, which had jurisdiction over Mexico and of such controversies, or power to enunciate an advisory opinion

thereon (as to which the undersigned is not called upon at present to express an opinion), the juristic personality of the Roman Catholic Church would be upheld within the universally recognized rule of international law illustrated as above by a Chief Justice of the United States speaking for the unanimous court.

Indeed, as stated by Chief Justice Fuller, "the corporate existence of the Roman Catholic Church, as well as the position occupied by the Papacy, has always been recognized by the Government of the United States." Many examples might be cited and would be were it not for the necessarily limited length of this opinion. But conspicuous and most pertinent among these examples would be the controversy which arose between the Roman Catholic Church and the Republic of Mexico in respect of the fund known as the "Pious Fund of California," which Mexico sought to confiscate although such fund had had a separate existence recognized by her several governments for the period of one hundred and sixty years. The Government of the United States intervened on behalf of the Roman Catholic Bishops in whom the title and control of such fund had become vested as matter of right. By those readers who are interested in having full and accurate information upon this important subject, reference should be made to *The History of the Pious Fund of California,* by John T. Doyle, San Francisco, California, 1887 (a publication of The California Historical Society), and *The Hague Arbitration Cases,* by George Grafton Wilson, Boston, 1915.

As this opinion is being finally revised, the press contains information* of the submission by President Calles

* See *The New York Times* of November 7, 1926.

to the Mexican Congress of a still more rigid church bill, which is to emphasize that the law no longer recognizes any legal or juristic personality in the religious groups known as churches and that consequently churches do not have any of the rights which the law concedes to persons. It is reported that the purpose of the President in this bill is to seal any possible loophole and to prepare the way for the rigid and absolute enforcement of the religious clauses of the Mexican Constitution. It is further stated that if Congress does not pass the bill, President Calles has power to promulgate it on his own account. Thus, even if some of the religious clauses of the Mexican Constitution of 1917 might be reasonably interpreted and enforced, the extent to which a hostile Congress or President may go is unlimited. In the leading case of *Yick Wo* v. *Hopkins* (1886), 118 United States Reports, at pp. 356, 373, the Supreme Court of the United States, in holding that a Chinaman was entitled to the full protection of our Constitution, among other things, said:

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

2.

THE ALLEGED SEPARATION OF CHURCH AND STATE.

It is believed that it may facilitate a better and truer understanding of the questions involved in the Mexican

situation if it be at the outset appreciated that, whatever may be protested or pretended in its behalf and defense, the Mexican Government is not attempting in good faith to bring about the separation of Church and State as Americans conceive the substance of such separation, nor is it attempting merely to prevent alleged ecclesiastical intervention or interference in politics or in matters of state. On the contrary, both the Mexican Constitution and the Presidential Decree now in question are calculated and, indeed, deliberately intended to bring about a more entire domination by the State over the Church than has ever existed before, and to place under the absolute control and supervision of the Mexican Federal and State Governments every church in Mexico, and preëminently the Roman Catholic Church and her temples, which, to repeat, represent the religious faith of more than nineteen-twentieths of the population. The membership of other churches, it is understood and counsel has been so instructed, may be reasonably asserted to be comparatively almost negligible so far as numbers are concerned; but they, of course, are equally affected and interested and will inevitably be equally subjugated and oppressed if they ever attempt to free themselves from governmental control and direction, though unhappily some of their spokesmen do not seem to perceive this and prefer to join in the attacks on the Roman Catholic Church in Mexico.

Under the 1917 Constitution, all church buildings in Mexico are being confiscated; and all Catholic orphan asylums, hospitals, colleges, convents, monasteries, etc., though devoted as they are to the noblest of charities, have likewise been confiscated and arbitrarily made the property of the State. The spoliation has been as com-

prehensive, complete and ruthless as all-inclusive language and vindictive enforcement could make it. The churches no longer own anything in the eyes of Mexican constitutional law! As we have seen they have been deprived of all juridical or juristic personality in order to deprive them even of the right to appeal for protection or redress to the courts of justice or to the Mexican Congress. The Mexican Government proposes to determine which of the church buildings so confiscated shall continue to be used for the holy purpose of divine worship; the State is to have the exclusive power to determine the number of ministers of any creed who may belong to any church, and these must be Mexican by birth; the State is to license, which means in final analysis select, all Catholic priests, all Protestant ministers, all Jewish rabbis; the churches are placed at all times under the supervision of political appointees, and the federal authorities are expressly granted by the Constitution of 1917 power to intervene even in matters of religious worship and outward ecclesiastical forms as may be authorized by any law, that is to say, by Presidential Decree, or legislation by the Federal Congress or the several State Legislatures.

It would, as it seems to the undersigned American counsel, be simply preposterous to claim that these provisions were intended to produce or promote in good faith the separation of Church and State in Mexico. On the contrary, a more complete subjugation of Church to State could not be devised by the wit of man. Certainly, no precedent of any such complete absorption of church control and regulation or governance of divine worship even in state churches by the State has ever before been at-

tempted in modern times except in Soviet Russia and Jacobin France, and no such precedent can be recalled in the history of Christianity or Judaism.

The Roman Catholic Church is not opposing the separation of Church and State in Mexico, provided such separation be not a sham and screen and will leave the Church free to teach the Gospel and to educate children and inculcate sound and true spiritual doctrines and moral rules of conduct without dictation from or supervision by government officials and subject only to reasonable police regulations.

In the opinion of the undersigned American counsel, the Roman Catholic Church could not reasonably or properly have accepted or submitted to any such control and supervision as are now exercisable by the Mexican Government under the Mexican Constitution of 1917 and the Presidential Decree of 1926. In fact, had the undersigned been consulted prior to the action of the Mexican Catholic Hierarchy and the Papacy in ordering the discontinuance of religious services in the Catholic churches, he would, with the deepest sense of professional duty and responsibility, have advised the cessation of all religious services under such governmental control and supervision, because in his opinion submission to the enforcement of the Constitution and Presidential Decree would inevitably lead to the subordination of the Roman Catholic Church in Mexico to the power of the State, the dictation of politicians, the complete union of Church and State, and the sacrifice of the independence and freedom which are essential to the true and proper functioning and discipline of any church of whatever religion. It would furthermore be absurd and preposterous to call such a condition religious liberty.

The views of the noblest and most philosophic minds, the glory of the human intellect during the past two centuries, might readily be quoted in overwhelming support of the proposition that church government must be free from outside governmental and political dictation. Furthermore, no such scheme as the present attempt of Mexican politicians to establish a Mexican National Church and a scission from due church government under the Roman Catholic Church could be acquiesced in without inevitably leading to separation from Rome and the establishment of a so-called Mexican National Catholic Church without any true or proper Catholic government thereof. This is necessarily in clear conflict with the basic doctrine of the Roman Catholic Church and the deep belief of her members that she is ecumenical and universal in the very sense and scope of the belief that all peoples ought to worship one and the same God, and that their Church was founded by Christ, true God and true Man, for the governance of the spiritual life of all men living under all skies, irrespective of nationality and irrespective of origin, class, or condition in life, even of servitude.

But above this consideration is a fundamental conception which all in her holy communion profoundly believe, and that is, that the Roman Catholic Church is not only of divine origin but is destined to be eternal in the destiny of man, *per omnia saecula saeculorum.* With such a belief and a polity in its support which is "the very masterpiece of human wisdom," the Church cannot temporize anywhere, in any country, with such a subversive, tyrannical and destructive system as is now being maintained by brutal force in suffering Mexico. The Roman Catholic Church must be true to her mission, though meantime the people of Mexico may have to endure great

spiritual suffering. Eighty-six years ago a great historian, Macaulay, who was hostile to and prejudiced against the Papacy, wrote of the permanence, not to say eternity, of the Roman Catholic Church in a famous and familiar passage, the following, viz.:

"There is not, and there never was on this earth, a work of human policy so well deserving of examination as the Roman Catholic Church. The history of that Church joins together the two great ages of human civilization. No other institution is left standing which carries the mind back to the times when the smoke of sacrifice rose from the Pantheon, and when camelopards and tigers abounded in the Flavian Amphitheatre. The proudest royal houses are but of yesterday when compared with the line of the Supreme Pontiffs. That line we trace back in an unbroken series from the Pope who crowned Napoleon in the nineteenth century to the Pope who crowned Pepin in the eighth; and far beyond the time of Pepin the august dynasty extends, till it is lost in the twilight of fable. The republic of Venice came next in antiquity. But the republic of Venice was modern when compared with the Papacy; and the republic of Venice is gone, and the Papacy remains. The Papacy remains, not in decay, not a mere antique, but full of life and youthful vigour. The Catholic Church is still sending forth to the farthest ends of the world missionaries as zealous as those who landed in Kent with Augustin, and still confronting hostile kings with the same spirit with which she confronted Attila. The number of her children is greater than in any former age. Her acquisitions in the New World have more than com-

pensated for what she has lost in the Old. Her spiritual ascendency extends over the vast countries which lie between the plains of the Missouri and Cape Horn, countries which, a century hence, may not improbably contain a population as large as that which now inhabits Europe. The members of her communion are certainly not fewer than a hundred and fifty millions [*i. e.* in 1840]; and it will be difficult to show that all other Christian sects united amount to a hundred and twenty millions. Nor do we see any sign which indicates that the term of her long dominion is approaching. She saw the commencement of all the governments and of all the ecclesiastical establishments that now exist in the world; and we feel no assurance that she is not destined to see the end of them all. She was great and respected before the Saxon had set foot on Britain, before the Frank had passed the Rhine, when Grecian eloquence still flourished in Antioch, when idols were still worshipped in the temple of Mecca. And she may still exist in undiminished vigour when some traveller from New Zealand shall, in the midst of a vast solitude, take his stand on a broken arch of London Bridge to sketch the ruins of St. Paul's."*

Three pertinent quotations from authorities are all that can further reasonably be made in this legal opinion: the first from Chancellor Kent in his famous *Commentaries on American Law;* the second from Lord Acton in his masterwork entitled, *The History of Freedom and other Essays,* London, 1909, and the third, from a decision of the Supreme Court of the United States.

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* Macaulay's Works, London, 1897, vol. vi, pp. 454-5, Essay on *Ranke's History of the Popes.*

Chancellor Kent in his *Commentaries* discussed religious liberty, and, among other things, said (vol. 2, p. * 34) as follows:

"The free exercise and enjoyment of religious profession and worship may be considered as one of the absolute rights of individuals, recognized in our American constitutions, and secured to them by law. Civil and religious liberty generally go hand in hand, and the suppression of either of them, for any length of time, will terminate the existence of the other."

Lord Acton wrote as follows (at pp. 151-2):

"Civil and religious liberty are so commonly associated in people's mouths, and are so rare in fact, that their definition is evidently as little understood as the principle of their connection. The point at which they unite, the common root from which they derive their sustenance, is the right of self-government. The modern theory, which has swept away every authority except that of the State, and has made the sovereign power irresistible by multiplying those who share it, is the enemy of that common freedom in which religious liberty is included. It condemns, as a State within a State, every inner group and community, class or corporation, administering its own affairs; and, by proclaiming the abolition of privileges, it emancipates the subjects of every such authority in order to transfer them exclusively to its own. It recognizes liberty only in the individual, because it is only in the individual that liberty can be separated from authority, and the right of conditional obedience deprived of the security of a limited command. Under its sway, therefore,

every man may profess his own liberty more or less freely; but his religion is not free to administer its own laws. In other words, religious profession is free, but Church government is controlled. And where ecclesiastical authority is restricted, religious liberty is virtually denied.

"For religious liberty is not the negative right of being without any particular religion, just as self-government is not anarchy. It is the right of religious communities to the practice of their own duties, the enjoyment of their own constitution, and the protection of the law, which equally secures to all the possession of their own independence."

The leading decision of the Supreme Court of the United States upon the question of church government and the necessity for its freedom from governmental interference or control is in the case of *Watson* v. *Jones,* 13 Wallace (U. S.) Reports, at pp. 679 *et seq.* It was decided at the December, 1871, term of that court, and it related to a controversy which had arisen as to the government, discipline and control of a Presbyterian Church in the City of Louisville, State of Kentucky. The opinion of the court was written by Mr. Justice Miller, one of the ablest and most scholarly justices who have ever sat in that great court. Whilst the issues involved did not relate to any constitutional or statutory enactment, portions of the reasoning of the court and the principles then enunciated by it would clearly apply to any attempt by Congress or a State Legislature in the United States to interfere in church government in the manner that is now being done and authorized to be done in Mexico by

its federal and state legislative bodies. Mr. Justice Miller discussed the protection which the law under our just and beneficent system of jurisprudence throws around the dedication of "property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principles, provided that in doing so they violate no law of morality, and give to the instrument by which their purpose is evidenced, the formalities which the laws require," and referred to "that full, entire, and practical freedom for all forms of religious belief and practice which lies at the foundation of our political principles." Speaking for the court, he used the following language (at p. 728), viz.:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the

secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

"Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. . . . It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so."

The opinion then reviews the authorities in other courts. Among these, Mr. Justice Miller cited the earlier case of *Chase et al.* v. *Cheney* (1871), 58 Illinois Reports, pp. 509, 536 *et seq.*, in which the highest judicial tribunal in the State of Illinois, among other holdings, enunciated the following:

"Shall we maintain the boundary between Church and State, and let each revolve in its respective sphere, the one undisturbed by the other? . . . Our constitution provides, that 'the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed.' . . . Religious worship consists in the performance of all the external acts, and the observance of all ordinances and ceremonies, which are engaged in with the sole and avowed object of honoring God. The constitution intended to guarantee, from all interference by the State, not only

each man's religious faith, but his membership in the church, and the rites and discipline which might be adopted. The only exception to uncontrolled liberty is, that acts of licentiousness shall not be excused, and practices inconsistent with the peace and safety of the State, shall not be justified. Freedom of religious profession and worship cannot be maintained, if the civil courts trench upon the domain of the church, construe its canons and rules, dictate its discipline, and regulate its trials. . . . It is as much a delusion to confer religious liberty without the right to make and enforce rules and canons, as to create government with no power to punish offenders. . . . The civil power may contribute to the protection, but cannot interfere to destroy or fritter away."

Consult also *Shepard et al.* v. *Barkley, Moderator, etc.* (1918), 247 United States Reports, pp. 1 *et seq.*, and *State ex rel. Hynes* v. *Catholic Church* (1914), 183 Missouri Appeal Reports, pp. 190 *et seq.*, which are typical of many other decisions by the highest courts of numerous States of the United States.

We may now turn to the Mexican Constitution of 1917 and the Presidential Decree of 1926 in order to apply to them the reasoning of Chancellor Kent, Lord Acton and Mr. Justice Miller and by that test determine whether they are or are not in violation of elementary principles of liberty and whether the Roman Catholic Church could submit to them without certainty of ultimate "total subversion" in Mexico.

The Constitution of 1917 provides, as shown in detail below (p. 30), not only for the confiscation of

the property of the Roman Catholic Church as well as the property of all other churches, but also that they "shall in no case have legal capacity to acquire, hold, or administer real property or loans made on such real property" (Article 27, subdiv. II). It declares (Article 5) that "the States shall not permit" any abridgement of personal liberty "whether by reason of labor, education *or religious vows,*"* and "does not permit the establishment of monastic orders, of whatever denomination, or for whatever purpose contemplated," that is to say, not even for educating the poor, caring for orphans or the blind or insane, or ministering to the sick and suffering in hospitals. Article 24 further provides that "every religious act of public worship shall be performed strictly within the places of public worship, *which shall be at all times under governmental supervision.*" Then follows Article 130, providing *inter alia* as follows:

> "Article 130. The Federal authorities [that is, of course, Mexican government officials and politicians] shall have power to exercise in matters of religious worship and outward ecclesiastical forms such intervention as by law authorized. All other officials shall act as auxiliaries to the Federal authorities. . . .
>
> "Ministers of religious creeds shall be considered as persons exercising a profession, and shall be directly subject to the laws enacted on the matter.
>
> "The State legislatures shall have the exclusive power of determining the maximum number of ministers of religious creeds, according to the needs of each locality. Only a Mexican by birth may be a minister of any religious creed in Mexico.

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* Italics here and elsewhere are not in original.

"No ministers of religious creeds shall, either in public or private meetings, or in acts of worship or religious propaganda, criticize the fundamental laws of the country, the authorities in particular or the Government in general; they shall have no vote, nor be eligible to office, nor shall they be entitled to assemble for political purposes.

"Before dedicating new temples of worship for public use, permission shall be obtained from the Department of the Interior (*Gobernacion*); the opinion of the Governor of the respective State shall be previously heard on the subject. Every place of worship shall have a person charged with its care and maintenance, who shall be legally responsible for the faithful performance of the laws on religious observances within the said place of worship, and for all the objects used for purposes of worship. . . .

"Under no conditions shall studies carried on in institutions devoted to the professional training of ministers of religious creeds be given credit or granted any other dispensation of privilege which shall have for its purpose the accrediting of the said studies in official institutions. Any authority violating this provision shall be punished criminally, and all such dispensation of privilege be null and void, and shall invalidate wholly and entirely the professional degree toward the obtaining of which the infraction of this provision may in any way have contributed.

"No periodical publication which either by reason of its program, its title or merely by its general tendencies, is of a religious character, shall comment upon any political affairs of the nation, nor publish any

information regarding the acts of the authorities of the country or of private individuals, in so far as the latter have to do with public affairs.

"Every kind of political association whose name shall bear any word or any indication relating to any religious belief is hereby strictly forbidden. No assemblies of any political character shall be held within places of public worship.

"No minister of any religious creed may inherit, either on his own behalf or by means of a trustee or otherwise, any real property occupied by any association of religious propaganda or religious or charitable purposes. Ministers of religious creeds are incapable legally of inheriting by will from ministers of the same religious creed or from any private individual to whom they are not related by blood within the fourth degree.

"All real and personal property pertaining to the clergy or to religious institutions shall be governed, in so far as their acquisition by private parties is concerned, in conformity with Article 27 of this Constitution [that is to say, confiscated].

"No trial by jury shall ever be granted for the infraction of any of the preceding provisions."

The Presidential Decree of June 14, 1926, drastically enforces the above quoted provisions of the Constitution and the anti-religious and bolshevistic spirit that animated and brought about their adoption. The following are quoted from a translation which counsel has been instructed is substantially correct, viz.:

"Law amending the penal code concerning crimes against the statute laws of the Federal district and terri-

tories, and crimes against the Federation throughout the Republic:

"Concerning crimes and offenses in matters of religious worship and outward conduct—

"Article 1. To exercise the ministry of any cult within the territory of the Mexican Republic, it is required to be Mexican by birth.

"Violators of this provision shall be punished summarily by a fine not to exceed 5,000 pesos, or in lieu thereof, by arrest of not to exceed fifteen days. Moreover, the Federal Executive, at his discretion, shall have power to deport, without further process, any foreign priest or minister violating this law, using for such purpose the authority which Article 33 of the Constitution grants him.

"Article 4. No religious corporation or minister of any cult shall be permitted to establish or direct schools of primary instruction.

"Those responsible for the infraction of this provision shall be punished with a fine not to exceed 500 pesos, or in lieu thereof, with arrest of not more than fifteen days, and in addition the authorities shall order the immediate closing of the teaching establishment.

"Article 6. The State cannot permit that there be carried into effect any contract, pact, or agreement that may have as an object the diminution, loss or irrevocable sacrifice of the liberty of man, whether it be for the reason of work, education or religious vow; the law, in consequence, does not permit the establishment of monastic orders, whatever may be the denom-

ination or the object for which they may seek to be established.

"For the purposes of this article, monastic orders are those religious societies whose individuals live under certain rules peculiar to them, by means of promises or vows, temporal or perpetual, and who subject themselves to one or more superiors, even though all the individuals of the order may have their living places separate.

"Monastic orders or established convents shall be dissolved by the authorities, after having made a record of the identification and affiliation of the ex-cloistered persons.

"If it is proved that ex-cloistered persons return to live a community life after the community has been dissolved, they shall be punished with a penalty of from one to two years in prison. In such case, the superiors, priors, prelates, directors or persons who may have a hierarchical standing in the organization or direction of the cloister shall be punished with a penalty of six years' imprisonment.

"In each case, women shall suffer two-thirds of the penalty.

"Article 7. Persons who induce or lead a minor to renounce his liberty through a religious vow shall be punished with 'major'* arrest and fine of the second class, even though there be bonds of relationship between them.

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* "By a 'major' arrest is meant action involving a sentence of more than fifteen days in a penitentiary. By a 'minor' arrest is meant action involving a sentence of not to exceed fifteen days in jail."

"If the induced person is of age, the penalty shall be 'minor' arrest and a fine of first class.

"Article 8. Any individual who, in the exercise of the ministry or priesthood of any religious cult whatsoever, publicly incites, by means of written declarations, or speeches or sermons, his readers or audience to disavowal of the political institutions or to disobedience of the laws, or of the authorities and their commands, shall be punished with a penalty of six years in prison and a fine of the second class.

"Article 10. Ministers of religion, whether in public or private meetings, or in acts of worship or religious propaganda, shall not criticize the fundamental laws of the country or the authorities of the government, either in particular or in general.

"Transgressors shall be punished with a penalty of from one to five years in prison.

"Article 13. Religious periodical publications or those simply with marked tendencies in favor of any specific religious belief, whether by their program or title, shall not comment on national political subjects nor publish information regarding the acts of the authorities of the country or of private persons, which may have a direct relation to the functioning of public institutions.

"The director of the publication, in case of infraction of this provision, shall be punished with the penalty of 'major' arrest and a fine of the second class.

"Article 15. The formation of any class of political group whose title may contain any word or indication relating it with any religious creed is strictly prohibited.

"If this provision is violated, the persons who com-

pose the board of directors, or the persons at the head of the group, shall be punished with 'major' arrest and a fine of the second class.

"The authorities shall order in each case that the societies having the character indicated in the first part of this article be broken up immediately.

"Article 17. All religious acts of public worship must be celebrated absolutely inside the churches, which shall always be under the supervision of the authorities.

"The celebration of religious acts of public worship outside the churches carries with it penal responsibility for the organizers and the participating ministers, who shall be punished with 'major' arrest and a fine of the second class.

"Article 18. Nor shall religious ministers or individuals of either sex belonging to such religion, be allowed to wear, outside the churches, special garments or insignia that indicate their religion, under the summary penalty of a fine of 500 pesos, or in lieu thereof, arrest of not to exceed fifteen days.

"In case of a second offense there shall be imposed the penalty of 'major' arrest and a fine of the second class.

"Article 21. The religious associations known as churches, whatever may be their creed, shall not have, in any case, capacity for acquiring, possessing or administering real estate, or real estate securities; those who actually do have such real estate, either in their own behalf or through an intermediary agent, shall turn it over to the Government of the Nation, the right

being granted to anyone to denounce the property that may be found in such case.

"Persons who conceal the goods and securities to which this article refers shall be punished with a penalty of from one to two years' imprisonment. Those who act as intermediary agents shall be punished with the same penalty.

"Article 22. The churches destined for public worship are the property of the Nation, represented by the Federal Government, which shall determine those churches which shall continue destined for the purpose of worship.

"Bishops' residences, parish houses, seminaries, asylums or colleges of religious associations, convents, or any other building that may have been constructed or destined for the administration, propagation or teaching of any religious belief, shall immediately pass, under the law (*de pleno derecho*) to the full ownership of the nation, to be destined exclusively for the public use of the Federation or of the States in their respective jurisdictions."

It surely must be manifest to all candid, fair-minded and tolerant men of whatever creed that the above quoted provisions from the Mexican Constitution and Presidential Decree alike would inevitably and utterly destroy the independence of the Roman Catholic Church and its ministers in Mexico; that they would totally subvert the necessary and indispensable governance and discipline of the Church in Mexico, and that although the Catholic Church has not actively resisted by force the tyrannical confiscation of her property, as in the past, nevertheless

submission to the oppressive, tyrannical and destructive measures by which the Mexican Government is now seeking to undermine and subvert the Church in Mexico would be wrong in principle and prejudicial in the long run to the best interests of the Mexican Catholics themselves. Hence, the Roman Catholic Church cannot submit and permit its temples, holy offices, liturgy and ceremonies to be placed under the control and supervision of socialistic and bolshevistic political officials who may be intent for their own ends either upon establishing a Mexican National Church to be controlled by revolutionary politicians, or upon destroying all churches of whatever denomination as has been ruthlessly attempted in Soviet Russia.

Paraphrasing the noble words of our Declaration of Independence, the Roman Catholic Church is advised that, whilst, of course and preëminently, first "appealing to the supreme judge of the world for the rectitude of [her] intentions," she now appeal to the advised opinion of mankind throughout the world and in the forum of fair and honest public opinion in every country, to the end that all may appreciate that her policy in Mexico is proper, wise and just, and that she would have been untrue to herself and her traditions if she had submitted in our age to the arbitrary, brutal and subversive persecution now being enforced in Mexico, which is so plainly incompatible with the crudest notions of religious or personal liberty.

3.
CONFISCATION OF CHURCH PROPERTY.

In considering the confiscation of the property of the Roman Catholic Church by the Mexican Constitution

of 1917, it should be borne in mind that it supplements the confiscations made under the Constitution of 1857 and other confiscatory measures both by the Mexican Republic and the Government of Spain before the independence of Mexico. Some of the supplemental provisions contained in the Constitution of 1917 should speak for themselves. They are as follows:

"Art. 27. . . . Private property shall not be expropriated except for reasons of public utility and by means of indemnification. . . .

"II. The religious institutions known as churches, irrespective of creed, shall in no case have legal capacity to acquire, hold or administer real property or loans made on such real property; all such real property or loans as may be at present held by the said religious institutions, either on their own behalf or through third parties, shall vest in the Nation, and any one shall have the right to denounce property so held. Presumptive proof shall be sufficient to declare the denunciation well-founded. Places of public worship are the property of the Nation, as represented by the Federal Government, which shall determine which of them may continue to be devoted to their present purposes. Episcopal residences, rectories, seminaries, orphan asylums or collegiate establishments of religious institutions, convents or any other buildings built or designed for the administration, propaganda, or teaching of the tenets of any religious creed shall forthwith vest, as of full right, directly in the Nation, to be used exclusively for the public services of the Federation or of the States, within their respective jurisdictions. All places of pub-

lic worship which shall later be erected shall be the property of the Nation.

"III. Public and private charitable institutions for the sick and needy, for scientific research, or for the diffusion of knowledge, mutual aid societies or organizations formed for any other lawful purpose shall in no case acquire, hold or administer loans made on real property, unless the mortgage terms do not exceed ten years. In no case shall institutions of this character be under the patronage, direction, administration, charge or supervision of religious corporations or institutions, nor of ministers of any religious creed or of their dependents, even though either the former or the latter shall not be in active service."

It follows that, although the Mexican Constitution expressly provides that "private property shall not be expropriated except for reasons of public utility and by means of indemnification," nevertheless Article 27 discriminates against religious institutions by providing for such expropriation of their property without any indemnity or compensation whatever.

Manifestly, there should be no doubt that, under elementary American principles of liberty, the expropriation or confiscation of church property without any indemnification or compensation whatever, as is provided in Article 27 of the Mexican Constitution of 1917, above partially quoted, would be declared unconstitutional and void and strongly condemned by any American court as politically unjust, whether attempted by the Congress of the United States or by the Legislature of any State in the Union. This view was voiced one hundred years

ago by Mr. Justice Story in the leading case of *Terrett* v. *Taylor* (1815), 9 Cranch's Reports, pp. 43, 49, 52, when, speaking for the Supreme Court of the United States, he used language quite applicable to the claim now advanced on behalf of the Government of Mexico that it is entitled as of governmental right to confiscate church property if it sees fit to do so and award to its owners no pay or compensation or indemnity whatever:

> "Be, however, the general authority of the legislature as to the subject of religion, as it may, it will require other arguments to establish the position that, at the revolution, all the public property acquired by the Episcopal churches, under the sanction of the laws, became the property of the state. Had the property thus acquired been originally granted by the state or the king, there might have been some color (and it would have been but a color) for such an extraordinary pretension. But the property was, in fact and in law, generally purchased by the parishioners, or acquired by the benefactions of pious donors. The title thereto was indefeasibly vested in the churches, or rather in their legal agents. It was not in the power of the crown to seize or assume it; nor of the parliament itself to destroy the grants, unless by the exercise of a power the most arbitrary, oppressive and unjust, and endured only because it could not be resisted. . . . Nor are we able to perceive any sound reason why the church lands escheated or devolved upon the state by the revolution any more than the property of any other corporation created by the royal bounty or established by the legislature. . . ."

Then, answering the argument that the legislative power could, by repealing a statute incorporating a church (in that case a Protestant Episcopal Church), escheat all its property to the State, Mr. Justice Story used the following language (at p. 52):

> "But that the legislature can repeal statutes creating private [religious] corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the state, or dispose of the same to such purposes as they may please, without the consent or default of the corporators, we are not prepared to admit; and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and the letter of the constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

It is deemed unnecessary to cite additional legal authorities to sustain the proposition, happily now elementary in American constitutional law, that the property of no church of whatever denomination can be taken by the Nation or any State without just compensation or indemnification. Just compensation is guaranteed to all religious corporations by the Fifth Article of Amendment to the Constitution of the United States, and it is also guaranteed to all religious corporations by the Fourteenth Article of Amendment, which is in express restraint of confiscatory action by any State.

4.

FREEDOM OF EDUCATION.

The importance of religious liberty in connection with education cannot be exaggerated. To Roman Catholics it is deemed essential and inseparable. For many centuries the education of children has been one of the principal functions and activities of the Roman Catholic Church, and well-informed, though hostile, critics have conceded to the Church an immeasurable debt for the preservation of learning, of the literature of the classics, of political and other philosophies, through the eclipse of the Dark Ages. To assert that the Church is now or ever was opposed to the education of the masses, or has left undone what it should have done to enlighten mankind, is to pervert all the teachings of history. It is true that in temporal matters and in the interpretation of scientific theories, certain ecclesiastics and officials may have erred, for they followed the then dominant and almost universal current of human ignorance and they erred alike with the best and most enlightened among other religious leaders. If during the past century in Mexico fair play and religious liberty, as we Americans now conceive fair play to all creeds and to all churches, had been granted to the Roman Catholic Church, it is highly probable and reasonably just to assume that the Mexican people of to-day would have been as well-educated as any other people and certainly as well-educated as the rural population in the United States was seventy years ago or is to-day, particularly in the Southern and Southwestern States that are predominantly Protestant, except Louisiana and perhaps two or three other States bordering on the frontier of Mexico and at one time part of that Republic. Several Protestant

critics have indicted the Roman Catholic Church as responsible for the fact that at present fully four-fifths of the Mexican population are illiterate, but they fail to state or recognize that the property of the Church has been generation after generation confiscated by the State and that it has thus been deprived of the funds necessary to maintain free schools such as the Church now maintains for more than 2,000,000 children in the United States. They likewise fail to state that the finest and most extensive educational foundation existing on this continent during the eighteenth century was utterly disrupted by the expulsion of the Jesuits from Mexico by Spain in 1767.

It is no exaggeration to say that whatever education and culture exist to-day in Mexico are due to teachers affiliated with the Roman Catholic Church, and that were it not for the repeated confiscations of church property Mexico would to-day be more fully provided with primary and secondary schools as well as high schools and colleges than are at present to be found in many of the States of the American Union. Mexico would, it is confidently affirmed, then be the literary and scientific light of Central and South America as Catholic France was indisputably the literary and scientific light of Europe in the seventeenth and eighteenth centuries in comparison with Protestant England and Protestant Prussia. Let us be fair and just, if fairness and justice be indeed possible in religious controversies or amid religious prejudices. In fair play let us recall how meagre were the educational facilities in the United States one hundred years ago, how high was then our percentage of illiteracy, how recent the introduction of free public schools supported by taxa-

tion, how inadequate our public school system still is in many States, and finally how shamefully the negroes, generally as intelligent and civilized as the Mexican Indians, have been treated in Protestant States. A quotation from a recognized authority may be instructive (*History of Education in the United States,* by E. G. Dexter, New York, 1906, p. 454):

> "The history of negro education in the United States goes back no further than the Civil War. Previous to that time in the South the teaching of the blacks, whether they be slaves or free, was forbidden by law, and in some states made an offense for which the pupil might be fined and whipped, at the discretion of the court, and the teacher be fined or imprisoned. In the North no such penalty was imposed, but since no special schools were provided for the blacks, and public sentiment opposed their admission to other schools, they were practically without educational advantages. It is true that both in the South and the North negroes occasionally were taught the rudiments of learning in the so-called 'clandestine schools'; still such instances were rare, and cannot be said to qualify the general statement that in *ante bellum* days the negroes were uneducated."

Attention has been called above to the sweeping confiscations of church property under the Mexican Constitutions of 1857 and 1917, but these were but two instances of many to be found in the history of both Spain and Mexico since the Conquest of the Aztecs. To hold the Roman Catholic Church responsible for not establishing more schools when its property and funds were being constantly confiscated or menaced with confiscation

and when wholly inadequate provision was being made by successive governments, is the extreme of unreasonableness and unfairness.

It is impracticable to discuss at length the fundamental principles and constitutional provisions which guarantee to all living in the United States true liberty in education and which prohibit the National Government as well as every State from denying to any parents of any class or creed the exercise of liberty in the education of their children. Three decisions of the Supreme Court of the United States will, however, be cited: first, in the case of *Meyer* v. *State of Nebraska* (1923), 262 United States Reports, pp. 390 *et seq.*, involving the right to teach German in a parochial school of the Protestant Zion Evangelical Lutheran Church; secondly, in the cases of *Bartels* v. *State of Iowa, Bohning* v. *State of Ohio* and *Pohl* v. *State of Ohio* (1923), 262 United States Reports, pp. 404 *et seq.*, involving the same right in certain Protestant schools in the State of Ohio, and, thirdly, *Pierce, Governor of Oregon, et al.* v. *The Society of the Sisters of the Holy Names of Jesus and Mary, and* v. *Hill Military Academy* (decided June 1, 1925), 268 United States Reports, pp. 510 *et seq.*, which latter cases involved the constitutionality of a state statute compelling all parents in the State of Oregon, under penalty of punishment as for a crime, to send their children between eight and sixteen years of age to a secular public school maintained by the State by means of general taxation.

In the first case, *Meyer* v. *Nebraska,* Mr. Justice McReynolds delivered the opinion of the court. It contains a remarkably interesting and instructive statement of the

views of the court in its interpretation of the broad scope and efficacy of the guaranty of liberty contained in all American constitutions—whether national or state. Only two paragraphs will here be quoted, although the entire opinion should be studied and pondered for its admirable breadth of view, scholarship and eloquence (pp. 399-400):

> "While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. *Slaughter-House Cases,* 16 Wall. 36; *Butchers' Union Co.* v. *Crescent City Co.,* 111 U. S. 746; *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Minnesota* v. *Barber,* 136 U. S. 313; *Allgeyer* v. *Louisiana,* 165 U. S. 578; *Lochner* v. *New York,* 198 U. S. 45; *Twining* v. *New Jersey,* 211 U. S. 78; *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire,* 219 U. S. 549; *Truax* v. *Raich,* 239 U. S. 33; *Adams* v. *Tanner,* 244 U. S. 590; *New York Life Ins. Co.* v. *Dodge,* 246 U. S. 357; *Truax* v. *Corrigan,* 257 U. S. 312; *Adkins* v. *Children's Hospital,* 261 U. S. 525; *Wyeth* v. *Cambridge Board of Health,* 200 Mass. 474. The estab-

lished doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts. *Lawton* v. *Steele,* 152 U. S. 133, 137.

"The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted. The Ordinance of 1787 declares, 'Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.' Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the States, including Nebraska, enforce this obligation by compulsory laws."

The cases above mentioned against the State of Ohio were similarly decided on the authority of the Nebraska case.

Then came before the Supreme Court of the United States, in March, 1925, the *Oregon School Cases,* and Mr. Justice McReynolds delivered its unanimous decision holding that the statute of the State of Oregon was unconstitutional and void because beyond the legitimate power of any State to interfere with the liberty and constitutional rights of parents. This opinion should like-

wise be studied in its entirety, but its tenor, so far as directly applicable to the present opinion of counsel, may be gathered from the following extracts (pp. 534-5):

"The inevitable practical result of enforcing the Act under consideration would be destruction of appellees' [*i. e.*, the Catholic Sisters'] primary schools, and perhaps all other private primary schools for normal children within the State of Oregon. These parties are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students or the State. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

"Under the doctrine of *Meyer* v. *Nebraska* [1923], 262 U. S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty,

to recognize and prepare him for additional obligations."

The Mexican Constitution of 1857 had provided (Article 3) that instruction should be free, and under this guaranty the Roman Catholic Church had been allowed to develop, so far as it could possibly do so in view of the confiscation of its property without any compensation or indemnity whatever under Article 27 of the same Constitution, which, however, was not as rigorous as the confiscation provided for in 1917. In 1857 the Church was permitted "to acquire title to, or administer . . . the buildings immediately and directly destined to the services or purposes of the said [religious] corporations and institutions"; but the Constitution of 1917 confiscated all these buildings without compensation of any kind.

Under the Mexican Constitution of 1857 and *a fortiori* under the provisions quoted above from the Constitution of 1917, it must be manifest that the Roman Catholic Church could not acquire the capital necessary to establish schools and colleges and to provide the necessary regular income for operating expenses. Development in education could not fairly be expected and certainly not after the overthrow of President Diaz and stable Government and the substitution of revolutionary and bolshevistic control under President Calles.

The Mexican Constitution of 1917, whilst in one breath declaring that *"Instruction is free,"* proceeds in the next absolutely to deny that right. Thus, we find the following:

"Art. 3. Instruction is free; *that given in public institutions of learning shall be secular. Primary in-*

struction, whether higher or lower, given in private institutions shall likewise be secular.

"No religious corporation nor minister of any religious creed shall establish or direct schools of primary instruction.

"Private primary schools may be established only subject to official supervision.

"Primary instruction in public institutions shall be gratuitous."

The first three words of this above quoted article were in the 1857 Constitution; the language following them and italicized was added in 1917.

The Presidential Decree of June 14, 1926, enforces the constitutional provisions by oppressive and cruel sanctions, which are obviously intended to prevent parents from having their children educated with any religious influence or religious instruction whatsoever. Some of these decretal enactments are as follows:

"Article 3. The instruction that may be given in official educational establishments shall be secular; likewise that given in the higher and lower primary branches of private educational establishments.

"Violators of this provision shall be punished summarily with a fine of not to exceed 500 pesos, or in lieu of such a fine, with arrest that shall not exceed fifteen days.

"In case of a second offense, the transgressor shall be punished with 'major' arrest and a fine of the second class, and in addition, the authorities shall order the closing of the establishment of learning.

"Article 4. No religious corporation or minister of any cult shall be permitted to establish or direct schools of primary instruction.

"Those responsible for the infraction of this provision shall be punished with a fine not to exceed 500 pesos, or in lieu thereof, with arrest of not more than fifteen days, and in addition the authorities shall order the immediate closing of the teaching establishment.

"Article 5. Private primary schools may be established only by subjecting themselves to official supervision. Transgressors of this provision shall be punished by a fine of 500 pesos, or in lieu thereof, by arrest of not to exceed fifteen days.

"Article 12. For no reason shall confirmation be made, exemption issued, or any other procedure take place that may have for its purpose the official validating of the studies made in establishments destined for the professional instruction of ministers of religion.

"Transgressors of this provision shall be removed from the employment or office which they hold, and shall be barred from other such employment in the same branch for a period of from one to three years.

"Any exemption or procedure to which the first part of this article refers shall be null and shall carry with it the nullification of the professional title the obtaining of which may have been a part of the infraction of this provision."

There can be no reasonable doubt, in the opinion of the undersigned American counsel, that these constitutional provisions and decretal enactments would be declared unjust and void and beyond the power of any legis-

lative body if ever enacted by our Federal Congress or by any State Legislature. It is deemed unnecessary further to elaborate the discussion of the constitutional principles that condemn these several oppressive and tyrannical measures as in plain conflict with religious liberty, sound principles of natural justice and the fundamental laws of every free government worthy of that name. To argue, as some have attempted, that under the Mexican Constitution of 1917, *"instruction is free,"* is to jeer at the public opinion of the civilized world. No country except Soviet Russia and the France of the Jacobin Terror has ever before so affronted the intelligence, the conscience and the sense of right and justice of civilized peoples. Such enactments are only consistent, if at all rational, with the deliberate purpose of destroying or totally subverting all religions in Mexico, in emulation of the inhuman, cruel and repulsive attempts to suppress religion by the Bolsheviks in Russia, which have so shocked the whole civilized world.

5.
INTERNATIONAL RELATIONS.

Many historical precedents of action on the part of the Government of the United States of America as well as of other countries could be cited which would abundantly support a protest or remonstrance and even armed intervention at the present time in Mexico, in order to assure to the Mexican people religious liberty. They can be found in the authoritative works of writers on international relations from Grotius (1583-1645), *De Jure Belli et Pacis,* to Professor Stowell's comprehensive review in his work *Intervention in International Law.*

President Coolidge, Secretary of State Kellogg and Ambassador Sheffield are familiar with these precedents and this international usage. These American statesmen, who are now in charge of our relations with the Mexican Government, are certainly in full sympathy with American principles of civil and religious liberty and appreciate, as Chancellor Kent declared, that "the suppression of either of them, for any length of time, will terminate the existence of the other." In fact both civil and religious liberty have long since terminated in Mexico, and these conditions must be a matter of profound anxiety and daily concern to our Government.

The problem of dealing with the Mexican Government is extremely delicate and complex. The conceptions of civil and religious liberty of many Mexicans are not our conceptions or those of other liberal and civilized peoples; in the domain of what we call liberty they speak a very different language; and they are extremely resentful of foreign advice or interference and particularly of advice or interference on our part. The Monroe Doctrine, which protects them against the enforcement of European rights and enables them under our protection to flout great nations, has generated no appreciation or gratitude. Any such natural sentiment or feeling of gratitude has long been obscured, if not entirely submerged, by cherished wrongs such as the annexation of Texas, the War of 1848, and the taking by us of immensely valuable territory. The relations between the two nations have been frequently stormy. Our treatment at times has inflamed a sensitive and proud people to intense indignation and resentment, although at the time of their successful revolution against Spain, Augustin de

Iturbide, in 1821, not only expressed gratitude to the United States, but declared his belief that Mexico and the United States were "destined to be united in the bonds of the most intimate and cordial fraternity." Unfortunately and lamentably, dissension and trouble soon arose, intensified as time passed by our annexation of Texas and the Mexican War of 1848 down to the high-handed and to many wholly unwarranted expedition which President Wilson sent to occupy Vera Cruz in 1914. These historical grievances and aggressions have been very interestingly treated in Professor Rippey's recent book entitled *The United States and Mexico.*

It is not, therefore, at all unnatural, although deplorable, that the Mexican people should harbor resentment and suspicion against their powerful and irresistible neighbor on all their northern frontier from the Atlantic to the Pacific; and that from this resentment and suspicion, so readily played on by demagogues, arises the great difficulty in dealing now with the question of religious liberty. Interference on our part might do the cause of liberty and religion more harm than any possible good. As Senator Newlands once said of a proposal to intervene in Mexico, we might thereby "open a Pandora's box of trouble for the United States for the next twenty years." History has recorded its tragedies in vain for those who do not realize that interference and intervention by the United States in Mexico in order to compel religious liberty, might precipitate the horrors and atrocities of civil war and that worst of all scourges, a religious civil war. Therefore, the undersigned American counsel is persuaded that thoughtful Catholics will not endeavor by agitation, political or otherwise, to force the hand of

our Government, far better advised as it must be of conditions in Mexico than others usually are. This responsibility towards the present generation and future generations weighs heavily enough upon our President. No President since Washington has been more deeply religious than President Coolidge; no President has ever felt more strongly that civil and religious liberty are inseparable and cannot exist apart in any country; and when he can effectively act by moral persuasion and sympathy or otherwise, he will speak for religious liberty on this continent in no uncertain or temporizing terms. Seldom before has language been more appreciative of religious liberty than that contained in the noble and eloquent address of his Secretary of Labor, Hon. James J. Davis (a very distinguished Protestant, Mason, Odd Fellow, etc.), at the Twenty-eighth International Eucharistic Congress at Chicago in June of this year, when he said in part as follows:

> "It gives me great pleasure, in addressing this Catholic audience, to call attention to the fact that the members of your communion who settled in Maryland share with Roger Williams, the founder of Rhode Island and Providence plantations, in the honor of being the first American settlers to establish the principles of religious toleration. The Catholics of Maryland respected the conscience of all men and women in that province. They allowed the men and women of the various protestant persuasions the same liberty that they asked for themselves. The student of the history of religious freedom in America knows that in according toleration to all faiths, the Catholics of America, in the one original colony that was settled by them, built

a monument to the great cause of religious freedom more enduring than one of bronze or marble.

"Catholics have reason to be proud of the growth of their faith in America. From humble beginnings the Church has grown by leaps and bounds until to-day it has nearly nineteen million communicants. Many of the leading citizens of our country to-day are of your faith. They are graduates of our universities. They are to be found in editorial chairs; they are leaders in the arts and sciences; many are illustrious men of letters; they have taken an eminent rank in the professions and in business. Catholics are found in our halls of legislation and upon the bench. Two of their number have been Chief Justices of the Supreme Court. On every field of battle in which America has engaged they have shed their blood in behalf of the land of their birth, or the land of their adoption, and on more than one hotly contested field a Catholic general has led the American arms. The patriotism of our Catholic citizens is not open to dispute. If there is any prejudice against Catholics in America, it comes from persons who make a specialty of prejudice, and, like all other countries, we have a few who do.

"So far as the bulk of our people are concerned, their minds are by nature tolerant of all that is tolerant. America has developed a neighborly spirit, in which all men and women who breathe a spirit of peace and good will feel themselves at home. We have no quarrel with any man's religion; and any nation that refuses to grant freedom of worship is a nation that must realize sooner or later that it has made the profoundest of mistakes.

"There are elements among us, as in other lands, which are so dissatisfied with life, or, rather, with the life that they know from experience that they desire to destroy our American institutions. These advocates of revolution are men who abhor all religion, and believe in neither God nor the life eternal. They are materialists against whom all who believe in the validity of spiritual ideals must set a face like flint. The Catholic church has stood like a wall of adamant against the vicious revolutionary procedures of this class, which are urged ostensibly in behalf of labor, but which really owe their origin in the will of a few to power. Whatever a man's religious faith may be, if he have one, he can have no intellectual commerce with this type of revolutionist."

This has been the elevated and inspiring spirit, likewise, of the Papacy and the Mexican Hierarchy. History admonishes them of the horrors of civil war and of the danger of inviting interference by foreign powers and armies to compel what the aggressors conceive to be either religious liberty or the only true faith. The splendid glory of the Crusades was dimmed by awful atrocities and barbarities. The menace of the invasion of England by Philip II and the great Spanish Armada during the reign of Queen Elizabeth, which had much of the character of a crusade, and other similar threatened invasions by Catholic Spain and Catholic France of Protestant England on religious grounds, did more than any other cause to alienate the English people from the Church of Rome. As a great English historian has said, "The work of the Jesuits was undone in an hour. The spirit of national unity proved stronger than religious strife."

England was thus lost for centuries to the Catholic Church by the proud spirit of resentful nationalism. And many students profoundly believe that the Massacre of Saint Bartholomew might never have stained the annals of Catholic France if the Huguenots had not inflamed religious as well as intense national resentment by inviting Spain and Germany to invade France in aid of the Huguenot cause. Hence, the wisdom of the refusal of the Papacy and the Mexican Hierarchy to approve either the inviting of foreign intervention by force or the drawing of the sword of religious civil war with its inevitable horrors and the inevitable aftermath of revengeful bitterness and indelible resentments. So, too, the wisdom of the determination of the Papacy not to approve the organization of a distinctively political Catholic party in Mexico, for experience and history in other countries have taught that the Catholic Church never can profit by entering into political strifes or by being drawn into the political combinations and compromises which politicians often deem vitally necessary to a political party, but which the Papacy cannot approve. Its eternal principles cannot be made a pendant to temporary political campaigns. It may lose now by such an attitude of promoting peace among men at any cost or sacrifice and by consistently refusing to bend to ephemeral expediency, but it will gain in the long run when truth must finally prevail.

New York, November, 1926.

WILLIAM D. GUTHRIE
of the American Bar.

Appendix I to Opinion of American Counsel.

TEXT OF THE STATEMENT OF THE EPISCOPAL COMMITTEE OF THE MEXICAN HIERARCHY.*

"As Congress refused to take into consideration the petition presented by the episcopate in which the Bishops requested certain reforms in the Federal Constitution, the Episcopal Committee thinks it its duty to comment on this action, not only to the Reverend Archbishops, Bishops and clergy and to the Mexican Catholic people, but also to the entire nation and to the whole world which is favorably interested in a people struggling to obtain liberty of conscience, education and religion, liberties which all civilized peoples of the world are enjoying.

"The Mexican episcopate in a precise manner has made known to the entire world in various statements the true situation of the Catholic Church in Mexico. Hampered by the present laws it cannot comply with the eternal mission which its Divine Founder, Jesus Christ, has confided to it. It has made known all the efforts which up to the present it has made to regain the liberty lost through these laws. Unfortunately the situation has not changed.

Solution of Conflict Sought.

"At a conference between members of the episcopate and the President of the Republic the latter invited us to petition the Federal Congress for reforms in the Constitution which we deemed necessary.

"We stated to the President and to the press that although our Government is democratic and representative in form the fact is that in the actual legislative Congresses the Catholic population of the country is not represented.

"In spite of this we desired to obey the suggestions of the President in order to show that we were willing to employ all legal methods to arrive at a solution of the lamentable conflict.

"The words of the President should mean to us and to all Catholic Mexican people a guarantee that when we sent our petition to Congress the Executive would consider this proceeding was legal, and the promise of the President not to prevent, in spite of his philosophical and political convictions, the introduction of reforms proposed by the late President, Don Venustiano Carranza, should be an indication of the good faith of the Chief Executive.

Petition Held Moderate.

"With directions so precise, we followed the road indicated and formulated our petition to Con-

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* Reprinted by permission from *The New York Times*, October 3, 1926.

gress with all moderation, limiting ourselves to a request for the reforms absolutely indispensable for religious liberty and in accord with the universal dictates of conscience.

"Our petition voiced the hopes of an immense majority of the nation, which in spite of the limited time endorsed it by public manifestations, by innumerable telegrams to Congressmen and by nearly half a million signatures.

"Under these circumstances it was logical to suppose that the members of the Chamber of Deputies would not fail to listen to the popular demand, and, imitating the conduct of the President, forget all personal prejudice and personal opinion, and grant satisfaction to the public that they represent.

"Unfortunately, in contrast with this noble and serene legal and pacific attitude of the episcopate, clergy and Catholic people, the Chamber of Deputies in session on the twenty-third of last month voted to reject our petition on the pretext that in their belief the Bishops and Archbishops of the Episcopal Committee had not the right of petition, because, according to Clause 3 of Article XXXVII of the Constitution, they had lost their citizenship.

Right of Petition Claimed.

"We wish to say in regard to the allegation that we foreswore the Constitution when we swore allegiance to the Church that we are Mexican citizens. In effect, Article XXXIV requires only that a person, to be a citizen of the republic, shall be a native of the country, 18 years old if married, 21 if not, and have an honest means of living.

"The Constitution expressly gives the right to all citizens to petition for reform of the laws.

"Although Congress cannot demonstrate that we have made an agreement before any minister of religion not to respect the Constitution, it is true that we have declared to the Roman Pontiff our objection to several articles of our Magna Charta. But not even this circumstance falls in the strictest sense within the text of Clause 3 of Article XXXVII. The loss of the rights of citizenship, so far as the right of petition in political matters is concerned, cannot be brought about except by competent authority, and then only after the interested parties have been heard. It is evident that the Chamber of Deputies lacks jurisdiction in this matter completely.

"We should be false to our duty if we did not protest formally before the nation and history against the statement that we have lost the status of Mexican citizenship, which was the basis of the chamber's rejection of our petition.

"Following the noble example of Saint Paul, who proclaimed his Roman citizenship, with love and pride we claim our rights to Mexican citizenship.

Refusal Declared Unjust.

"We have sought recognition of our natural rights, backed and up-

held by eternal justice, recognized by our Constitution and by all civilized countries, rights which constitute the indestructible heritage of free peoples in all countries of the world.

"The denial of our petition by Congress was made so lightly that one newspaper of great circulation commenting on it said:

" 'We never believed that Congressmen in the Chamber of Deputies would base their rejection upon reasons so futile and so unworthy.'

"In spite of all this the Mexican Catholic people should not despair because of this unjust refusal. They must persevere in their noble attitude. They must continue working through all legal means until their ideas triumph. Only by doing this can they avoid bloodshed.

"We prelates and all the clergy and Mexican Catholic people will remain firm and serene, always demanding liberty through legitimate methods. We expect that our Legislators will reconsider their decision and give satisfaction to a people thirsting for liberty and justice.

"But we shall make known to the entire world that if Congress does not reconsider its decision we shall persevere in our just demands as long as necessary in order to obtain reforms in the laws and the removal of the religious restrictions so that the glorious aura of religious liberty will shine upon our country."

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